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IN THE

Supreme Court of the United States

OCTOBER TERM, 1999

UNITED FARMERS PLANT FOOD, INC.,
D/B/A FARMERS AG CENTER,
Petitioner,

VS.

LEBANON CHEMICAL CORPORATION,
D/B/A LEBANON SEABOARD CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner United Farmers Plant Food, Inc., d/b/a Farmers Ag Center ("United"), and Respondent Lebanon Chemical Corporation, d/b/a Lebanon Seaboard Corporation ("Lebanon"), entered into Contract No. M-2020 on March 5, 1997. The item and quantity terms provided for the sale of 1,250,000 pounds of Kentucky 31 Tall Fescue. United generated the contract on a standard form that United used. At the bottom of the form was the following legend: "This memo is subject to the Trade Rules of the American Seed Trade Association." Rule XVI of the Trade Rules of the American Seed Trade Association ("ASTA") provided that "all differences which cannot be amicably resolved, even if only one of the parties declare [sic] that there is a difference, arising from a contract started or concluded under these Rules, shall first be decided by arbitration before it can be submitted to a court of law."

Contract No. M-2020 also contained the following under a section of the document entitled "Remarks":

4. The balance of seed left at Farmers Ag Center as of April 30th, 1997: bagged seed and/or seed of non shippable form.

5. The balance of seed left at Farmers Ag Center as of April 30th, 1997 will be billed out as follows: bagged seed from outside vendors: Farmers Ag Center's cost plus difference in cost and this contract according to quality of the seed. Non-shippable seed to be billed out at $.80 per pound—with the difference in $.80 and this contract being due August 1, 1997.

United argued that these "Remarks" required Lebanon to purchase the entirety of United's seed inventory on hand as of April 30, 1997, *in addition to* the 1,250,000 pounds provided for in the portion of the document entitled "Quantity." Lebanon, on

the other hand, maintained that Contract No. M-2020 unambiguously provided for the sale of 1,250,000 pounds of seed, and that Remarks numbers 4 and 5 dealt with shipment and payment terms with respect to the 1,250,000 pounds. United wanted payment in full for all 1,250,000 pounds of seed by the end of April 1997, even if some of the seed were not in shippable form at that time. Lebanon did not want to pay full price for seed that it could not immediately use. As a compromise, Lebanon agreed to pay the full price for seed that was shippable as of April 30, 1997, and to make a partial payment of $.80 per pound for any of the 1,250,000 pounds of seed that was not shippable as of April 30, 1997. Lebanon expected that United would process any of the remaining seed by August 1, 1997, at which time Lebanon would pay United the balance between the contract price and $.80.

Lebanon received 1,248,500 pounds of seed under Contract No. M-2020 before April 30, 1997. Lebanon paid in full for all of this seed and took delivery of it.

After Contract No. M-2020 was completed, Lebanon continued to receive orders from its customers for additional seed. These orders were evidenced by bills of lading that customers would send to Lebanon by computer. Lebanon, in turn, would forward these bills of lading to United's computer to fill. Because it was getting late in the selling season, Lebanon was apprehensive about entering into new seed contracts with United for fear of ending the season with a large, unsold inventory of seed.

Lebanon decided that it would attempt to fill customer orders out of its existing inventory on hand at United. If Lebanon did not have enough seed in inventory, or if the seed in Lebanon's inventory did not meet the packaging specifications of the customer, then United could go to market to buy just enough seed to meet the customer's bill of lading. It would be up to United to

determine whether Lebanon had enough seed in inventory to meet the orders. Lebanon communicated this change to United.

After March 5, 1997, United in fact had to go to market to purchase additional seed because Lebanon did not have sufficient inventory. United sent Lebanon a number of invoices for seed with bills of lading attached. Lebanon paid these invoices. Lebanon also paid several invoices that did not have bills of lading attached because the seed had been shipped directly to Lebanon's storage facility in Bristol, Illinois.

United also sent to Lebanon a number of invoices without bills of lading attached. These invoices, which used the same form as Contract No. M-2020, referenced contract numbers other than Contract No. M-2020. Just as with Contract No. M-2020, these additional invoices contained a legend stating that "this memo is subject to the Trade Rules of the American Seed Trade Association." Lebanon did not pay these invoices and asked United to furnish the bills of lading. The prices and the quality of seed reflected in these invoices did not comport with the price and quality provisions contained in Contract No. M-2020. United did not inform Lebanon until January 1998 that the additional invoices were supposedly related to Contract No. M-2020.

When United refused to deliver to Lebanon seed that Lebanon had paid for, Lebanon filed an action in the United States District Court for the Western District of Missouri (the Honorable Russell G. Clark, Senior United States District Judge) seeking specific performance and injunctive relief. The District Court ordered United to turn over the seed for which Lebanon had paid. United later counterclaimed for payment of the additional invoices allegedly generated under the auspices of Contract No. M-2020. United also moved to compel arbitration under Contract No. M-2020, or in the alternative, under the additional invoices.

On June 29 and 30, 1998, the District Court, sitting without a jury, conducted a two-day evidentiary hearing on United's motion to compel arbitration. The Court found that Contract No. M-2020 was unambiguous as to the quantity of seed sold pursuant to that contract, namely, 1,250,000 pounds, and that all of this seed had been paid for and delivered, thereby concluding the contract. The Court firmly rejected United's contention that the "Remarks" set forth in Contract No. M-2020 in any way suggested "that *additional* seed sales [were] contemplated under contract M-2020." Pet. for Writ of Cert. at 17a (*Lebanon Chemical Corp. v. United Farmers Plant Food, Inc.*, No. 98-3013-CV-S-RGC, Order (W.D.Mo. July 9, 1998)) (emphasis in original). In addition, the Court stated as follows:

> Even if contract M-2020 could be found to be ambiguous as United suggests, the Court finds from the evidence presented at the hearing on June 29, 1998, that the parties did not intend for contract M-2020 to be a standing contract for the sale of additional seed above the 1,250,000 pounds of seed that was bought and paid for under contract M-2020.

Id.

The District Court considered and rejected United's argument that the invoices United had sent to Lebanon created contracts for the sale of additional seed. While the parties had a prior course of business that established contracts based upon invoices, the Court found that the parties changed their method of making a contract.

> From the evidence presented at the hearing, the Court finds that the parties did not intend to consummate a contract until a bill of lading had been provided to Lebanon which showed to Lebanon that performance had been completed by United's delivery of seed to a customer of Lebanon. A bill of lading for inventory to be held at United did not

> necessarily constitute a completed contract until both parties agreed to the existence of that contract. With respect to the unpaid disputed seed that was held in inventory at United, the Court finds, therefore, that the parties did not intend to create contracts. Thus, no contracts were created for any of the unpaid disputed seed.

Id. at 18a.

Finding no contracts with respect to the disputed seed in question, the District Court denied United's motion to compel arbitration. On appeal, the Eighth Circuit affirmed, noting that the arbitration provision in the ASTA Trade Rules required arbitration only of those differences "arising from a contract started or concluded under these Rules . . . ." *Id.* at 7a (*Lebanon Chemical Corp. v. United Farmers Plant Food, Inc.*, 179 F.3d 1095 (8th Cir. 1999)). The appellate court "agree[d] with the district court that United has not established the existence of a contract from which the unpaid disputed invoices arise." *Id.* at 12a (*Lebanon Chemical Corp.*, 179 F.3d at 1102). "Without a contract from which the dispute arises, there can be no applicable arbitration clause." *Id.* at 11a (*Lebanon Chemical Corp.*, 179 F.3d at 1101).

ARGUMENT

It is axiomatic that before a court may compel parties to submit a dispute to arbitration, the court must first find that the parties had an agreement to arbitrate. "[T]he arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 115 S.Ct. 1920, 1923 (1995). *See* 9 U.S.C. §3.

Far from usurping its proper role, the District Court in the present case properly exercised its gate keeping function under the applicable provision of the Federal Arbitration Act, 9 U.S.C. §3, by determining at the outset whether the parties had a written arbitration agreement governing the issues in dispute. The District Court conducted an evidentiary hearing and based upon the evidence, found that there was no contract and no arbitration agreement with respect the matters in dispute. In the absence of a contract and written arbitration agreement, the District Court properly held that no basis existed upon which the Court could compel arbitration.

Notably, United does not take issue with the District Court's findings of fact and conclusions of law. Instead, United faults the District Court for performing the very inquiry required of it under the Federal Arbitration Act. United erroneously contends that the mere existence of an arbitration agreement in *any* contract provides a sufficient basis to compel the parties to arbitrate, *even if the contract containing the arbitration agreement is completely unrelated to the subject matter of the dispute*. Such an argument defies common sense and ignores the requirement of 9 U.S.C. §3 that before compelling arbitration, a federal court must first be satisfied that an issue involved in a suit is referable to arbitration under a written agreement for such arbitration. The Eighth Circuit had little problem disposing of this argument:

> United argues that once the court found that M-2020 was a valid contract with an arbitration clause, its inquiry should have ended with all issues being sent to arbitration. We disagree. The arbitration agreement provides relief for disputes arising from a contract started under the ASTA rules. Finding a valid contract under the ASTA rules is only the first step of the district court's inquiry. The court must also make sure that the dispute arises from that contract. When a court determines arbitrability of a dispute, it looks to more than the mere existence of a valid arbitration agreement. It also measures the scope of that agreement and determines whether the present dispute is included within its reach.

Pet. for Writ of Cert. at 9a (*Lebanon Chemical Corp.*, 179 F.3d at 1100) (citing *First Options*, 514 U.S. at 944-45; *Houlihan v. Offerman & Co.*, 31 F.3d 692, 694-95 (8th Cir. 1994)).

Because Contract No. M-2020 was unrelated to the unpaid disputed seed, which was not subject to any contract, a written arbitration agreement did not exist with respect to the disputes concerning the unpaid seed. Therefore, the District Court properly denied United's motion to compel arbitration.

CONCLUSION

In response to United's motion to compel arbitration, the District Court correctly inquired into whether the parties had a written agreement to arbitrate the issues before the Court. The District Court conducted an evidentiary hearing and found that the parties did not have such an agreement. The appellate court agreed, and affirmed the District Court's order denying United's motion to compel arbitration. United does not dispute the District Court's findings of fact or conclusions of law, but rather faults the District Court for engaging in an inquiry to determine the existence *vel non* of an agreement to arbitrate. United's petition for a writ of certiorari is without merit and finds no support in the law or the facts.

Wherefore, Lebanon respectfully requests that the Court deny United's petition for a writ of certiorari.

Respectfully submitted,

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